

**Yusuf bin Awang v Datuk Bandar Majlis Bandaraya
Shah Alam & Majlis Bandaraya Shah Alam**

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 21–247 OF 2003
SURIYADI J
6 NOVEMBER 2003

Civil Procedure — Injunction — Interlocutory injunction — Whether defendant can be restrained from evicting the plaintiffs — Essential (Clearance of Squatters) Regulations 1969 r 10, Local Government Act 1976 s 108, Rules of the High Court 1980 O 29

This was an application by the plaintiff for an interlocutory injunction to restrain the defendants from evicting the plaintiff from a piece of land in Klang. The defendants were not the owners of the land. The defendant issued certain eviction notices pursuant to r 10 of the Essential (Clearance of Squatters) Regulations 1969.

Held, granting the interlocutory injunction with costs:

- (1) The preconditions laid down in r 10 are stringent. Any failure to comply with the preconditions must certainly meet the wrath of the court as not only were the rights of the citizens affected, but the draconian repercussions involved (see para 19).
- (2) Rule 10 requires a subjective opinion to have been formulated by the defendants before the provisions can be invoked. Here, not only was there no independent evidence to establish that the actions had come about as a result of subjective deliberation, but the defendants brazenly admitted that the drastic action undertaken was in response to an administrative direction of another entity. It was clear that the defendant had never exercised its mind to subjectively conclude that it was expedient and necessary to demolish the houses in the interest of the public. This surely was a serious flaw, which prima facie was not in consonant with r 10, requiring the defendants to be stopped in their tracks before any irreparable damage was done prior to the trial (see para 20).
- (3) The defendants had failed to comply with the provisions of service as laid down in s 108 of the Local Government Act 1976. Regardless of the unequal standing of a party in any litigation, with procedural law firmly entrenched in Malaysia, no action could successfully get off the ground unless good service has taken place. As the court was not convinced that the defendants had complied with the legal requirements, the court was unable to conclude that notice had been given to all the plaintiffs (see para 30).
- (4) The words used in the notices to justify the entry was not on the basis of the statutory ground of public interest but on the basis of the plaintiffs having built or occupied squatter houses. Whether the alleged latter infringement came within the purview of public interest, or whether the defendants should have followed closely the words of r 10, was a question of fact and law yet to be resolved (see para 32).

- A** (5) On the facts, the plaintiffs would qualify as bare gratuitous licensees regardless of whether there was consideration for the occupation or otherwise. Being licenses they thus could not be trespassers as they were lawfully on the premises, whether pursuant to a matter of grace or benevolence of the owners (see para 37).
- B** (6) The license to occupy will terminate the moment a valid notice to quit is served on each plaintiff. On the facts, no notice to quit was sent to the plaintiffs or any sort of evidence was brought to the court's attention to prove that the plaintiffs were trespassers (see para 38).

C [Bahasa Malaysia summary]

Ini adalah satu permohonan oleh plaintiff untuk satu injunksi interlokutori bagi menghalang defendan-defendan daripada mengusir plaintiff daripada sekeping tanah di Klang. Defendan-defendan bukan pemilik tanah tersebut. Defendan mengeluarkan notis usiran tertentu menurut peraturan 10 Peraturan

- D** Perlu (Pembersihan Setinggaan-Setinggaan 1969.

Diputuskan, memberikan injunksi interlokutori dengan kos:

- E** (1) Pra-syarat yang telah ditetapkan oleh peraturan 10 adalah ketat. Sebarang kegagalan mematuhi pra-syarat tersebut pasti akan menimbulkan kemarahan mahkamah kerana ianya bukan sahaja menjejaskan hak warganegara yang terlibat tetapi juga kesan draconian akibat daripadanya (lihat perenggan 19).
- F** (2) Peraturan 10 menghendaki defendan-defendan merumuskan suatu pendapat yang subjektif sebelum peruntukan-peruntukan tersebut boleh digunakan. Di sini, bukan sahaja tidak terdapat keterangan yang bebas untuk membuktikan bahawa tindakan-tindakan tersebut telah terbit daripada pertimbangan yang subjektif, tetapi defendan-defendan telah mengakui dengan secara jelas bahawa tindakan drastik yang telah diambil itu merupakan susulan kepada suatu arahan pentadbiran dari sebuah entiti yang lain. Jelas bahawa defendan tidak pernah menggunakan fikirannya untuk merumuskan secara subjektif bahawa adalah perlu dan bermanfaat untuk merobohkan rumah-rumah tersebut bagi kepentingan awam. Ini sudah pasti merupakan suatu kecacatan yang serius yang prima facienya tidak selari dengan peraturan 10, yang memerlukan defendan-defendan dihalang sebelum apa-apa kerosakan yang tidak boleh dibaiki, berlaku sebelum perbicaraan (lihat perenggan 20).
- G**
- H**
- I** (3) Defendan-defendan telah gagal untuk mematuhi peruntukan-peruntukan mengenai penyampaian seperti mana yang telah ditetapkan dalam s 108 Akta Kerajaan Tempatan 1976. Berlandaskan tatacara undang-undang prosedur yang telah berumbi di Malaysia, tanpa menghiraukan pendirian yang tidak sama oleh sesuatu pihak dalam mana-mana litigasi, tidak ada tindakan yang boleh berjaya kecuali penyampaian yang baik telah dilakukan. Oleh kerana mahkamah tidak yakin yang defendan-defendan

telah mematuhi keperluan undang-undang maka mahkamah tidak dapat memutuskan bahawa notis telah pun disampaikan kepada semua plaintif-plaintif terlibat (lihat perenggan 30).

- (4) Perkataan-perkataan yang telah digunakan di dalam notis-notis tersebut yang bertujuan untuk mewajarkan kebenaran masuk telah tidak berasaskan kepada alasan statutori untuk kepentingan awam tetapi atas dasar plaintif-plaintif telah membina atau menduduki rumah-rumah setinggan tersebut. Sama ada pelanggaran yang dikatakan itu memenuhi skop kepentingan awam, atau sama ada defendan-defendan harus mematuhi dengan sepenuhnya perkataan-perkataan yang terkandung dalam peraturan 10, adalah suatu persoalan fakta dan undang-undang yang masih perlu diselesaikan (lihat perenggan 32) .

- (5) Berasaskan fakta, plaintif-plaintif adalah nyata pemegang-pemegang lesen yang gratis, tidak kira sama ada terdapat pertimbangan mengenai faktor bahawa plaintif-plaintif telah mendiami atau sebaliknya. Sebagai pemegang-pemegang lesen tersebut, plaintif-plaintif dengan itu tidak boleh dianggap penceroboh kerana dari segi undang-undang mereka telah pun berada di atas premis tersebut, sama ada atas ihsan atau dengan kemurahan hati pemilik (lihat perenggan 37).

- (6) Lesen untuk menduduki itu akan tamat sebaik sahaja notis yang sah untuk mengosongkan disampaikan kepada setiap plaintif. Berasaskan fakta, tiada notis untuk mengosongkan telah dihantar kepada plaintif atau apa-apa bentuk keterangan telah dibawa ke perhatian mahkamah untuk membuktikan bahawa plaintif-plaintif tersebut merupakan penceroboh-penceroboh (lihat perenggan 38).]

Notes

For cases on interlocutory injunctions, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 2707–2794.

Cases referred to

American Cynamid Co Ltd v Ethicon (1975) AC 396 (refd)
Caltex Oil Malaysia Ltd v Lee Than Song (1969) 2 MLJ 184 (refd)
Latham v Johnson (1913) 1 KB 398 (refd)
Lian Keow Sdn Bhd & Anor v Overseas Credit Finance (M) Bhd & Ors [1982] 2 MLJ 162 (refd)
Shamsudin bin Che Mat & Ors v Datuk Bandar Kuala Lumpur [2000] 4 MLJ 177 (refd)
Toh Kheng Heng & Anor v Ahmad Fauzt bin Mohd Taufek [1994] 1 MLJ 356 (refd)
Yeap Cheng Hock v Kojima-Taisei Joint Venture [1973] 1 MLJ 230 (refd)

Legislation referred to

Essential (Clearance of Squatters) Regulations 1969 rr 10, 22
 Local Government Act 1976 ss 1(5), 3, 108(2)(b), (c), (3), 166

- A** Municipal Ordinance (Cap 133) s 385
Rules of the High Court 1980 O 29 rr 1(2), 2(A)

CK Teng (Teng, Chang, Khim & Co) for the plaintiff.
Sharizal Jimin (Sharizal Jimin & Co) for the defendant.

B Suriyadi J:

- [1]** On 23 October 2003, the plaintiffs had appeared before me ex parte, applying for an interim injunction pursuant to O 29 r 1 of the Rules of the High Court 1980 ('the ex parte interim injunction'). To avoid any irreparable damage that could be occasioned by delay I had dealt with it promptly
- C** (*Caltex Oil Malaysia Ltd v Lee Than Song* [1969] 2 MLJ 184; O 29 r 1(2)). Whether irreparable damage would be occasioned in the event of a delay in dealing with the matter, rested primarily on the contents of the affidavit, which had been filed together with the application. Naturally, unless the contents were clear, concise and convincing as mandated by r 2(A), not only
- D** would I be unable to conclude that I must not delay the matter, but would be unable to decide whether I ought to entertain the application and grant the ex parte interim injunction. As a consequence of the new amendment PU(A) 342 to O 29, any ex parte interim injunctive order is only valid for 21 days, effective from the date of the order being pronounced, with the latter required to be served within one week of the pronouncement.
- E** **[2]** After pronouncing 'order in terms' to the ex parte application, and in consonant with the abovementioned statutory requirement of r 2BA, I had fixed 6 November 2003 as the hearing date for the inter partes application, ie before the expiry of the 21 days.
- F** **[3]** On the appointed date of 6 November 2003 the contesting parties were present and I had heard the interim injunction application inter partes ('the inter partes interim injunction'). It is quite trite that as far as the plaintiffs were concerned, they merely had to regurgitate whatever they had submitted earlier at the ex parte stage, except that they now had to contend with the defendants' presence backed by their affidavit-in-reply. To elucidate
- G** slightly, ex parte applications as opposed to one made inter partes, which will only witness a one sided argument is normally resorted to in urgent cases, or when secrecy is of utmost importance in order to prevent the defendants from taking up certain measures wishing to avoid the effect of the interim injunction.
- H** **[4]** Regardless of that difference, as far as the court is concerned the approach or requirements of law applicable to an interim inter partes injunction application does not differ to one made ex parte. Both deal with injunctions, and both equally interim in nature (provisional or interlocutory). The ex parte injunction, expires within 21 days after the granting of the order pursuant to r 1(2B), whilst an interim inter partes injunction (if the need arises), may continue until a certain period, eg until the disposal of the
- I** case. That interim injunction application or order may also be the stepping-stone towards the final relief, ie a perpetual injunction to be granted to the plaintiffs at the conclusion of the trial. The object of the interim injunction

is to preserve the legal rights or property in dispute, with the least injury to all parties, until their rights can be finally determined (*Nelson's Law of Injunctions* (4th Ed)).

[5] In the current case, at the end of the hearing of the inter partes interim injunction application, much to the chagrin of the defendants I again had ordered 'order in terms'.

[6] So, what was the 6 November 2003 application all about? This litigation was made vide a summons in chambers, praying inter alia that an inter partes interim injunction be granted whereby the defendants, their agents or representatives be prevented from enforcing the notices pursuant to r 10 of the Emergency (Essential Powers) Ordinance 1969 (Ordinance 1 and 2) (Essential (Clearance of Squatters) Regulations 1969) ('the impugned provision'). This provision reads:

10(1) If in the opinion of a local authority it is expedient and necessary to do so having regard to the public interest then notwithstanding regulations 6 and 7, the local authority, its agents, or servants may, after giving 7 days' notice in writing to the occupier:

- (a) enter by day or by night any private land for the purpose of summarily demolishing any squatter hut; and
- (b) summarily demolish any squatter hut on the land.

[7] The prayer in the application pursuant to the above provision, if successful would prevent the eviction of the plaintiffs in whatever way, or disturb/intimidate the plaintiffs from occupying land known as CRN 43019, Lot No 37488 and GM 1849 Lot No 17494 Mukim Kapar, District of Klang, Selangor Darul Ehsan ('the impugned land'), until disposal of the originating summons.

[8] The facts from the supporting affidavit revealed that the occupiers of the said land, popularly known as Kampung Rimba Jaya, numbered 1,074 families, with the impugned land registered under Hock Hup Developments (Sdn) Bhd.

[9] The defendants certainly were not the owners. On 15 and 16 October 2003, the plaintiffs were alleged to have received notices called 'Notis Meroboh Bangunan' (peraturan 10) Peraturan Perlu (Pembersihan Setinggalan-Setinggalan 1969) ('Notice of demolition (r 10) (Essential (Clearance of Squatters) Regulations 1969' ('the demolition notices') from the workers, representatives or agents of the defendants. For the sake of appreciating the matter at hand fully I herewith reproduce one of the notices:

MAJLIS BANDARAYA SHAH ALAM

Peti Surat 7200, Wisma MBSA, Persiaran Perbandaran,

40000 Shah Alam, Selangor Darul Ehsan.

Tel: 03-55105133 samb226

Fax: 03-55139470

E-Mel: mbsa@mbsa.gov.my

LAMANWEB: www.mbsa.gov.my

A Kepada: YUSUF BIN AWANG SA 22/5C/4, LRG 5C KG. RIMBAJAYA SHAH ALAM.

PERATURAN-PERATURAN PERLU (PEMBERSIHAN SETINGGAN-SETINGGAN 1969) NOTIS MEROBOH BANGUNAN (PERATURAN 10)

B Adalah dimaklumkan bahawa satu siasatan/bancian telah dijalankan dan didapati tuan/puan telah mendirikan/mendiami binaan setingan di SA 22/5C/4, LRG 5C, KG RIMBA JAYA, SHAH ALAM tanpa kebenaran dari pihak Majlis.

2 Oleh yang demikian, tuan/puan didapati melakukan kesalahan di bawah Peraturan-Peraturan Perlu (Pembersihan Setingan-Setingan) 1969. Tuan/Puan dikehendaki dalam tempoh 7 hari dari tarikh notis ini supaya menjalankan kerja-kerja yang perlu bagi maksud itu iaitu:-

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(a) mengalihkan apa-apa orang atau harta alih dan

(b) merobohkan apa-apa binaan di atas tanah tersebut.

D SILA AMBIL PERHATIAN sekranya tuan/puan didapati gagal/engkar mematuhi notis ini sehingga luput tempoh masa yang ditetapkan, pihak Majlis boleh mengambil tindakan tanpa sebarang notis selanjutnya ditetapkan lagi.

Apa-apa kerosakan dan kerugian adalah tanggungjawab tuan/puan sendiri. Pihak Majlis tidak akan memberi sebarang tuntutan ganti rugi. Pihak Majlis juga akan menuntut kos dalam mengambil tindakan di atas.

Kod Kad Kuasa: KKL R/2/8

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b/p Datuk Bandar

Majlis Bandaraya Shah Alam

Saya..... mengaku telah menerima notis seperti di atas.

F * TIADA KERJASAMA

Tarikh: 15.10.03 (Tandatangan)

No. Kad Pengenalan:

The interpreted version reads:

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(MAJLIS BANDARAYA SHAH ALAM (Address as above))

To: YUSOF BIN AWANG

(Address as above)

1 ESSENTIAL (CLEARANCE OF SQUATTERS) REGULATIONS 1969

H

NOTICE TO DEMOLISH BUILDING

(RULE 10)

You are informed that an enquiry/census had been undertaken and it was discovered that you had built a squatter's edifice at SA 22/5C/4, LRG 5C, KG RIMBA JAYA, SHAH ALAM without permission from the BOARD.

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2 You thus had committed an infringement under the Essential (Clearance of Squatters) Regulations 1969. You are thus required within 7 days from the date of this notice to perform works for the purpose of:

(a) removing anyone or any moveable property and

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(b) to demolish any building structure on the said land.

TAKE NOTE that if you fail to comply with this notice within the given time, the Board will take the necessary action without further notice.

Any damages or losses suffered will be borne personally. The Board will not entertain any claims for those losses. The Board will also demand costs for the above action.

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(Ditto as to the rest)

On behalf of the Mayor

Majlis Bandaraya Shah Alam

C

I admit to have received the notice as above.

* NO CO-OPERATION

Date: 5.10.03 (Signature)

Identity card number:

D

[10] Interestingly, these notices had different experiences as regard their treatment, eg:

1 notices to Yusof Awang (first plaintiff), Aziz bin Ismail (fourth plaintiff), Azenan bin Saad (sixth plaintiff) were left unsigned with the words 'tiada kerjasama' (no co-operation) written on them;

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2 notices to Rosli bin Abd Ghani (second plaintiff), Hashimi bin Hussain (third plaintiff) were left unsigned with the notation 'notis ditampal' (notice was stuck on something on them);

3 notice to Zainal Abidin bin All (fifth plaintiff) was received by one Saunah bt Che Wan, but unsigned. It carried the minutes 'tiada kerjasama' (no co-operation);

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4 notice to Abu Hassan bin Ismail (seventh plaintiff) was received by one Normayani bt Othman but left unsigned. It also carried the words 'tiada kerjasama' (no co-operation):

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5 notices to A Kathamuthirian (eighth plaintiff), Mohd Said bin Mustapha (ninth plaintiff) were never received by anyone or signed and merely had notation 'tiada kerjasama' (no co-operation);

6 notice to Othman bin Hassan was supposed to have been received by one Haji Othman bin Hassan but remained unsigned and without any notation; and

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7 notices to Norizal bin Nasir and Nasir Said were not received or signed by anyone but displaying a notation 'nota: diberikan kpd En Nasir Said' (note: handed to one En Nasir Said).

[11] In a gist, the defendants in 12 notices similar in content to the above example had alleged that the plaintiffs were squatters, and were required to leave the impugned land after demolishing any structures, within seven days

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A of the abovementioned notice. As said above, the r 10 notices sent by the defendants to the plaintiffs met with different treatment as indicated in the exhibits themselves.

[12] The supporting affidavits of the plaintiffs laid down, inter alia, these grounds for purposes of the application viz.:

- B** 1 the notices handed to the plaintiffs requiring them to remove anyone any moveable property/and demolish the structures on the said land were undated;
- 2 the notices were defective as they did not indicate the correct law;
- C** 3 the notices did not have the signatures and relevant official stamps of the first defendant's representatives;
- 4 the notices contravened the Essential (Clearance of Squatters) Regulations 1969.
- D** 5 the above regulations had never been gazetted;
- 6 the plaintiffs had never received any eviction notices from the land owner prior to the notices given by the defendants; and
- 7 the defendants had acted ultra vires the above Essential (Clearance of Squatters) Regulations 1969.
- E**

[13] One Hj Rosli bin Bakar on behalf of the defendants, and for the purpose of the inter partes application, had affirmed that the second defendant was a local authority set up pursuant to the Local Government Act 1976 ('the said Act'), with the first defendant being a position held by an individual responsible towards the smooth running of the local authority, pursuant to s 10 of the said Act. In clear terms under para 6, the defendants had revealed that on 7 October 2003 they had received discreet instructions from the State Secretary's office pursuant to the State Exco's direction, that all structures on the impugned land be demolished. In accordance with the instruction, the needful was done whereby notices were issued on the plaintiffs giving them seven days to vacate the impugned land, with the defendants entering after the expiry of the given period in order to demolish any squatter's edifice. The defendants further alleged that at the time of the service of the notices the plaintiffs had refused to acknowledge service. The defendants' deponent likewise did not deny the fact that the owner of the land was Ken Rimba Jaya Sdn Bhd previously known as Hock Hup Developments Sdn Bhd.

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[14] The defendants further ventilated that the developers (not the defendants) had made offers to the occupants of the squatter homes, with the following terms:

- I** (a) a low cost apartment to every house owner, to be built on the impugned land, at a cost of RM35,000;
- (b) an ex gratia payment of RM7, 200 to each family; and

- (c) an exemption from the 10% payment of any bank loan, in the event the offer of buying that apartment is taken up.

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[15] The defendants further alleged that plaintiffs 4, 5, 7 and 9 had opted to acquiesce to the offer and had actually signed the agreement. The latter further canvassed that the notices issued to the plaintiffs had dates on them thus rejecting any assertion that they were flawed.

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[16] The reasons why I granted the inter partes interim injunction were manifolds, starting with the available evidence or lack of it, which convinced me that the plaintiffs had 'a real prospect' of succeeding in their claims for a full injunction at the full trial stage. Thereafter, among others, I had considered the issue of adequacy of compensation of the successful plaintiffs at the end of that full trial, for the loss they would suffer if the interim inter partes injunction were not granted.

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SERIOUS EVIDENTIAL AND LEGAL QUESTIONS THAT WOULD ENSURE A REAL PROSPECT OF SUCCEEDING IN THE PLAINTIFFS' CLAIMS FOR A FULL INJUNCTION AT TRIAL PROPER

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[17] To highlight the facts as ventilated in open court, it was the policy of the State Government of Selangor to enforce the program of squatter cleansing from the State, resulting in the defendants facing the plaintiffs headlong. The very land where the plaintiffs resided had been earmarked for that program, and it involved four phases, which inevitably meant the demolition of the plaintiffs' houses; at the time of the application the phase where the plaintiffs resided, was yet to be cleared for low cost houses ('the impugned phase'). As indicated earlier, not all the plaintiffs had accepted the offers of the registered landowners, but despite this ongoing discussion the defendants appeared on the scene, after issuing the seven days clearance notice. Any failure to comply with the notices would inevitably meet the wrath of the demolition party who had brought along with them the bulldozers. Herewith are some of the flaws of the defendants' act that I had considered:

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Requirement of subjective test by the defendants in law

[18] Enclosure 5 of para 6 of the affidavit, affirmed by Rosli bin Abu Bakar on behalf of the defendants in crystal clear terms revealed that on October 7, 2003 after receipt of the discreet directive of the State Secretary's office that the Exco Majlis Tindakan Ekonomi Negeri Selangor (hereinafter referred to as the Exco) had directed the defendants to demolish the premises of the plaintiffs, prompt compliance was undertaken by the former. Pursuant to that direction, the defendants had issued the notices pursuant to the relevant rule, ie r 10 of the Essential (Clearance of Squatters) Regulations 1969. Rule 10 in clear terms state that if:

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- (i) in the opinion of a local authority;
- (ii) it is expedient and necessary to do so;
- (iii) having regard to the public interest then notwithstanding regs 6 and 7, the local authority, its agents, or servants may;

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- A** (iv) after giving seven days;
- (v) notice in writing to the occupier enter by day or by night any private land for the purpose of summarily demolishing any squatter hut and summarily demolish any squatter hut on the land.
- B** [19] Any practitioner will not hesitate to conclude that the preconditions laid in the relevant r 10 are quite stringent. Any failure to comply with those preconditions must certainly meet the wrath of the court as not only are the rights of the citizen affected, but the repercussion will also be draconian for him. Therefore unless the relevant ingredients have been fully satisfied the invocation of the rule will not be permitted.
- C**
- D** [20] In crystal clear terms, the above rule requires a subjective opinion to have been formulated by the defendants, before the draconian provision is adverted to. Here, not only is there no independent evidence to establish that the actions had come about as a result of a subjective deliberation, but brazenly admitted that the drastic action undertaken was in response to some administrative direction of another entity. Interestingly enough, the direction of the State Secretary apart from it being irrelevant, not only did not come about as a by-product of its own study and deliberation, but derived from another source, ie the State Exco. Evidentially, apart from the question of how the Exco arrived at that conclusion being a total mystery, let alone the conclusion being twice removed, it was thus tainted on the premise of it being hearsay based. Regardless of the dearth of evidence considered by the State Exco (certainly not a local authority), it was quite clear to the court that the defendants had never exercised its mind to subjectively conclude that it was expedient and necessary to demolish the houses in the interest of the public. This surely was a serious flaw, which prima facie was not in consonant with the prerequisite of the impugned provision, necessitating the stopping of the defendants in their tracks before any inconsolable damage was done prior to the trial.
- E**
- F**
- G** *Issue of giving notice to the occupiers*
- H** [21] A sight of the impugned r 10 requires 'the giving of seven days notice in writing to the occupier'. As regards the notice, there is a definite requirement that it must be in writing. Apart from that it is my reading that if the defendants have complied with all the prerequisites in the impugned law, meaning that the defendants have done the needful to bring those notices to the occupiers, in this case the plaintiffs' attention in accordance with the impugned law, then the onus has shifted. How the notices are to be brought to the attention of the occupiers must surely be by service, as provided for by the connected provisions. If the defendants have not adhered to them there will be a failure of service, and the plaintiffs could not in law, be said to have been notified. Whether by implication an occupier must in reality have read the notice is a matter of construction, reserved for discussion at some other time, though at first blush that requirement is not demanded.
- I**

[22] One must appreciate the fact that before a family is required to vacate his premises, the head of the family will surely consider many pressing factors in the like of identifying the new place of residence, preparing the transport to ferry his household items to the new house, choosing the appropriate schools for his children, appreciating the distance of his place of work and or spouse vis-a-vis the new home, considering the cost factors and many other pertinent matters which cannot be disregarded. The fact that they are not financially well endowed merely exacerbates matters for the affected families.

[23] In real terms, seven days surely cannot be sufficient for the occupier to resolve all those practical issues. Even under s 74 of Act 133 by analogy, 'where a building is to be demolished by the local authority, it shall give at least thirty days notice to the occupants of the building requiring them to vacate the building ...' Regardless of the unhappy predicament of the affected families in the current case, as the legislators have promulgated those numbers of days, the court's hand are tied, but must subscribe to the letters of the law. Surely, despite the sighting of the notices the occupiers' predicament would still be untenable, imagine their indescribable unhappiness if they knew nothing of them. This underscores further the importance of service and strict compliance of the law, which had been denied by the plaintiffs, as highlighted and confirmed by the very 'neutral' notices themselves.

[24] A perusal of the relevant law in stark terms has emphasized the importance of proper service, as gauged by the words provided for under the connected rules, namely:

10A(1) Notwithstanding the provision of regulations 7 and 10 if the local authority has served upon the occupier in pursuance of regulation or 10 ...

(2) ...

(3)(a) ...

(3)(b) In the case where notice has been sewed on the occupier in pursuance of paragraph (1) of regulation 10 the owner shall pay to the local authority such sum of money payable under paragraph (1) of this regulation upon demand being made therefore by the local authority.

22 Services of Notices

Every notice required or authorized by these Regulations to be served on any person may be served in accordance with section 385 of the Municipal Ordinance (Cap 133).

[25] Inappropriately enough, when the court asked the defence counsel to supply the court a copy of s 385 of the Municipal Ordinance ('Cap 133'), the reply was that they had failed to locate it. Whether it was poor preparation before appearing in court or otherwise, r 22 does demand service of notice in pursuance of the impugned law. In the course of my research I found that pursuant to s 166 of the said Act s 385 of Cap 133 had been repealed, as indicated in the Act's Second Schedule. As provided for by s 1(5) of the said Act, s 108 thereafter takes centre stage as regards service of documents, pursuant to the requirements of the abovementioned r 22. Under the said s 108, service

- A** of a document to an occupier may be complied with by personal service, or serving it at the last known address known to an adult member of the household, leaving the documents at the last known residential or business address in an envelope addressed to the occupier, or posting it by prepaid postage to the last known residential or business address.
- B** [26] The defence had brought to my attention the case of *Shamsudin bin Che Mat & Ors v Datuk Bandar Kuala Lumpur* [2000] 4 MLJ 177, but having perused that case, I could not help noticing that the facts are distinguishable to the current one. Falza Tamby Chik J in clear terms had said:
- C** Part 11 of the Regulations is the power of the local authority to demolish squatter huts erected on state land. Part 111 of the Regulations is the power of local authority to demolish squatter huts on private land. The difference between the powers of Part 11 and 111 is that the powers of local authority under Part 11 of the Regulations are to be exercised at the absolute discretion of the local authority at anytime *without the requirement of giving notice ...* (Emphasis added.)
- D** [27] I have no quarrel with the above view, as Part 11 of the impugned law is silent as to the service of any notice to an occupier, perhaps premised on the fact that the land occupied by the squatters are State land, reserved land, mining land and forest land. Part 111 on the other hand pertains to private land, where different rights exist and must be observed and respected by all and sundry, including the local authority.
- E** [28] There are steps to be undertaken by the latter before encroaching into privately owned land, starting with the service of a written notice by a local authority to the owner as indicated by ss 6, 7 and 8. Rule 10, for the reasons provided for in the latter rule, is no exception to the requirement of notices, but requiring the giving of notice direct to the occupiers without going through the processes of notifying the owner first, or waiting for them to seek out the assistance of the defendants.
- F** [29] Bearing in mind the excruciating obstacles that will be faced by the occupiers before moving out, what with service being necessary under r 10, merely sticking the notices on some inappropriate wall, handing them and acknowledged by some unconnected person, not serving them at all to the occupiers (being some of the examples of the bad service), and justifying the nonchalant work by mere remarks of 'no co-operation' brings to mind the trappings of the wild west. Under s 108(3) of the said Act, the notices could be stuck on a conspicuous part of the premises, conditional on there being no adult in the household to receive them. On the other hand it was quite clear, as detailed out by the defendants in para 7 of encl 5 that the latter possessed the comprehensive names and addresses of the occupiers. With that list in possession, it would have been plain sailing for the defendants to advert to the said s 108(2)(b) and (c) of the said Act first, by merely leaving or posting the notices at the last known address, in the event there was lack of co-operation on the part of the plaintiffs. In term of sequence, the latter acts should have been the first step undertaken by the defendants, before sticking the notices to some tree or wall. For some unexplainable reason this was not done, as the brazen mode as stated above, was instead resorted to
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(with many without the names of the occupiers/plaintiffs), despite knowing their identity. Zeroing in on the flawed action of the defendants, ie the non-observation of the law without first resorting to the ample provisions provided for, and despite possessing a complete dossier of the plaintiffs, surely militates against the relevant service provisions.

[30] To wind up the poser, regardless of the unequal standing of a party in any litigation, what with the procedural law firmly entrenched in Malaysia, no action can successfully get off the ground unless good service has taken place. As I was not convinced that the defendants had complied with the requirements of the impugned law, I was unable to conclude that notice had been given to all the plaintiffs hence the eventual outcome of the application.

The misleading words and contents of the notices and hence their questionable validity

[31] I now would like to touch on the notices proper given by the defendants to the plaintiffs. A scrutiny of them will reveal that the defendants had stated that they had allegedly carried out an inquiry/census, and had further asserted that the plaintiffs had built squatter structures, which were an infringement pursuant to the impugned law. To begin with, the issue of inquiry/census was without foundation as none was carried out, bearing in mind that the action which culminated in these notices, was pursuant to a third party's direction.

[32] Apart from the above, a reading of r 10 reveals that this provision could be adverted to if 'in the opinion of a local authority it is expedient having regard to the public Interest enter on the land'. Regretfully in this case, the words adverted to in the notices, to justify the entry was not on the basis of the statutory ground of public interest but on the basis of the plaintiffs having built or occupied squatter houses. Whether the supposed latter infringement came within the purview of public interest, or whether the defendants should have stuck closely to the words of r 10 in the notices, was a question of fact and law yet to be resolved.

[33] Even though it is not within the purview of the court to interfere with a genuinely formulated subjective opinion of a local authority, any opinion which in reality was exercised by another, must subject itself to the scrutiny of the court. If in reality there was no inquiry or census as per the misleading contents of the notices, hence rejecting any probability that the defendants could have subjectively arrived at those conclusions let alone the reasons supplied did not accord with rule 10, the notices therefore must be bad and thus invalid. To conclude, in a scenario where the court is prevented from reviewing the subjective opinion, it is my considered view that an applicant is entitled to avail himself of any technical defects, which may invalidate the notices as in this case.

Whether the plaintiffs were trespassers within the context of the impugned law

[34] At the risk of repeating, rule 10 is a unique provision in that a local authority may successfully invoke and act pursuant to it, without prior

- A consultation of the landowners, conditional on all prerequisites having been adhered to fully. Pursuant to it, it is trite law that before the defendants decide to enforce the sanctions in the notices in the interest of the public, and even if the reasons in the notices could come within the purview of 'public interest', it is still incumbent upon the defendants to successfully establish the all important ingredient that the plaintiffs were squatters at the material time.
- B In the context of this rule, as the plaintiffs were alleged to have infringed r 10 by building squatters huts (see definition under s 3) on the impugned land, it must mean that they had erected them not in accordance with plans approved by the defendants or in respect of which licences issued by the defendants had been cancelled, withdrawn or had expired.
- C [35] Despite the fact that the defendants did not own the impugned land no supporting affidavit had been filed by the owners stating that the plaintiffs were indeed squatters in the common law sense. I had to bear in mind that this well-known village (Kampung Rimba Jaya) catering for a family of 1,074 did not just materialize overnight but had been around for sometime without the landowners complaining. Sir Frederick Pollock in *Pollock on Tort* (15th Ed) had occasion to author that:
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A trespasser may in any case be turned off land before he has gained possession, and he does not gain possession until there has been something *like acquiescence in the physical fact of his occupation on the part of the rightful owner* (Emphasis added.)

- E [36] Taking the matter a step further Kevin Gray and Susan Francis Gray in *Elements of Land Law* had authored at p 138:

Licences may assume various forms and perform a multiplicity of purposes. The overlapping categories of the licence recognized by the law include bare licences, contractual licences, equitable or irrevocable licences, licences based on proprietary estoppel and licences with the grant of interest ...

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- The law of licence reflects the prerogative of the owner or possessor of land to dictate the terms on which access may be enjoyed by strangers ... A 'bare licence' is accordingly a personal permission, granted otherwise than for consideration, to enter and be present upon the land of another... The bare licence to enter to enter land performs only the minimal function of providing a defence to what would otherwise be the tort of trespass. The licensee's liability in trespass revives when his licence is terminated (Emphasis added.)
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- H [37] In that context the plaintiffs would certainly qualify as a bare gratuitous licensees regardless of whether there was consideration for the occupation or otherwise. Perhaps due to this tacit approval, implying knowledge and encouragement on the part of the landowners, the village with all their structures had grown to what it is now. Being licensees they thus cannot be trespassers as they were there lawfully on the premises, whether pursuant to a matter of grace or benevolence of the owners. Syed Agil Barakhbah J (as he then was) in *Yeap Cheng Hock v Kajima-Taisei Joint Venture* [1973] 1 MLJ 230 had occasion to remark:
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At common law a licensee is one who is lawfully on the premises, in the sense that he is not a trespasser, but does not come within the description of an invitee because

he does not enter on business which concerns the occupier. He is there with the permission of the occupier given as a matter of grace or pleasure and not as a matter of business. Those who are invited as guests, whether from benevolence or for social reasons, are not in law invitees but licensees. The law does not take account of the worldly advantage which the host may remotely have in view.'

[38] That licence to occupy will terminate the moment a valid notice to quit appears for each and every plaintiff (*Yeap Cheng Hock v Kajima-Taisei Joint Venture; Toh Kheng Heng & Anor v Ahmad Fauzi bin Mohd Taufek* [1994] 1 MLJ 356; *Latham v Johnson* [1913] 1 KB 398). I must hasten to add that no notices to quit from the owners was established to have been sent to the plaintiffs, or any sort of evidence was brought to my attention by the defendants to prove that the plaintiffs were now trespassers, after having enjoyed the status of licensees before. Without such evidence a distinction had arisen, whereby the plaintiffs were no squatters' simpliciter who had no rights whatsoever, but occupiers with licence or consent, at least implied, sourced from the registered owners based on the history and facts of the occupation.

[39] If I may be permitted to make an observation, the terminology of 'squatter hut' is a creation of the impugned Essential (Clearance of Squatters) Regulations 1969 emanating from the Emergency (Essential Powers) Ordinance 1969 (Ordinance 1 and Ordinance 2). Under the interpretation provision of r 3, 'squatter hut' is defined as:

means any house erected otherwise than in accordance with a plan approved by a local authority and is situated on any land.

[40] In the context of the above law, the meaning is so restrictive. A reading of it would mean that, any house etc. is a squatter hut only if not built in accordance with a plan approved by a local authority and situated on any land, regardless of the views of the landowners and nothing more. If the local authority's lack of approval is the governing factor in a statute based action, to qualify as a squatter hut as alleged, then surely if the defendants are accusing that the houses under debate have been built without permission, the onus of proof lies on them? The defendants could not advert to the contents of the notices for support, to accuse that the houses were built without approval, as there never was an enquiry or census carried out by them as regards their status. The questionable contents were mere excuses to justify the notices, when even the defendants admitted that the current exercise was primarily to comply with the orders of their superiors.

[41] From the defendants' and administrative aspect, nothing was affirmed in Hj Rosli bin Bakar's affidavit to state that the structures to be demolished had been erected without the defendants' approval. Whether this was an evidential oversight or otherwise was not for me to speculate. Unless the defendants state otherwise, let alone the plaintiffs were licensees, I must take it at face value that the houses did not infringe any by-law. Without conclusive evidence that the plaintiffs were squatters, the proactive action of the defendants to evict them vide r 10, even on one solitary flaw suffice to invalidate the notices.

A [42] To summarize the matter, I had found the action of the defendants to be flawed on many grounds, inter alia:

(i) failure of the defendants to formulate their own opinion (subjective) as required by rule 10;

B (ii) failure of good service of the relevant notices on the plaintiffs;

(iii) the notices being misleading and hence invalid; and

(iv) failure to establish that the plaintiffs were squatters in the context of r 10.

C [43] With those factual flaws before me, I was satisfied that there existed a serious question to be tried (in fact several), with the plaintiffs having a real prospect, not necessarily certainty, of succeeding in his claim for a full injunction at the trial proper (*American Cynamid Co Ltd v Ethicon* [1975] AC 396).

D [44] Having been satisfied of the existence of a serious factual question to be tried, I had thereupon proceeded to consider whether if successful at the full trial, the plaintiff would be adequately compensated. If they could be adequately compensated I would not have given them the 'order in terms' pronouncement. I had proceeded on thereafter and considered the pertinent question of what if the injunctions were granted but the defendants were the final victors? As there was justification in the granting of the interlocutory injunction, in that the plaintiffs would not be adequately compensated later if the order were not granted, though the defendants would, even if they were to succeed I did not consider the issue of balance of convenience. I must state categorically that in the event I had any doubts at the end of the hearing of the application, as to the adequacy of damages as a remedy to either or both sides, then I would have proceeded to consider all the circumstances and thenceforth decide whether 'the balance of convenience' favoured the granting of the inter partes interim injunction or not. As it were, as stated earlier, there was no necessity for me to reach even this stage.

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G [45] To elucidate the above last sentence, in a gist, if that interim injunction order were not meted out, the plaintiffs would certainly lose the very roofs over their heads even before I had the opportunity to evaluate the yet to be adduced evidence. Come the date of trial on 30 March 2004, unless I grant the injunctive order, the substratum of the case would have dissipated and no amount of compensation or tears could adequately compensate the plaintiffs even if they were to succeed eventually. The purpose and policy of this interim inter partes injunction could not have been more lucidly put whence

H His Lordship Salleh Abbas FJ in *Lian Keow Sdn Bhd & Anor v Overseas Credit Finance (M) Bhd & Ors* [1982] 2 MLJ 162 had opined:

I An interlocutory injunction is a temporary and discretionary remedy. To consider whether to grant it or refuse it the court is not concerned with the chances of success or failure of the appellants in proving their civil suits at the forthcoming trial, neither is the court's function to evaluate the evidence and materials before it for that purpose. The court is simply concerned with what it has to do in the meantime in order to protect the right of the parties so that no irreparable injury would be

caused to either of them. Further whilst the court is not concerned with such questions the court must however, be satisfied that there are serious questions to be gone into in that suit, lest an application for an injunction should be made on frivolous and vexatious grounds.

[46] Suffice for me to state that after having considered all the above factors, let alone that irreparable damage would be suffered by the plaintiffs in the event an injunction were not granted even if they were to win later, and without sacrificing the predicament of the defendants, I had not hesitated in granting 'order in terms' with costs.

Interlocutory injunction granted with costs.

Reported by Eugene Jayaraj

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